

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q88476

Gerard EMMER

Appln. No.: 10/540,141

Group Art Unit: 1791

Confirmation No.: 7199

Examiner: Suzanne E MCDOWELL

Filed: August 9, 2005

For: METHOD AND INSTALLATION FOR THE PRODUCTION OF A PLASTIC
CONTAINER

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

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I. REAL PARTY IN INTEREST

The real party in interest is SIDEL, the assignee of the present application. The assignment was recorded on August 9, 2005, at Reel 017291, Frame 0343.

II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, there are no other prior or pending appeals, interferences or judicial proceedings known to Appellant's Representative or the Assignee that may be related to, be directly affected by, or have a bearing on the Board's decision in the Appeal.

III. STATUS OF CLAIMS

Claims 1 and 3-33 are all the claims pending in the application. Claims 22, 24 and 28 stand finally rejected and are the subject of this Appeal. Claims 1 and 3-21 are allowed and claims 23, 25-27 and 29-33 are objected to as being dependent upon a rejected base claim, but would be allowed if rewritten in independent form.

IV. STATUS OF AMENDMENTS

Prior to the Final Office Action issued August 12, 2008, Appellant filed an Amendment Under 37 C.F.R. § 1.116 dated July 2, 2008. That Amendment was not entered. Accordingly, the claims on appeal are those as set forth in the Amendment under 37 C.F.R. § 1.111 filed January 3, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to a system for injecting a fluid into a preform to produce a plastic container. *See* Specification, p. 3, lines 13-20.

The concise description of the claimed subject matter of the present invention is set forth below with regard to independent claim 22. Each of the following discussions includes reference to various portions of the present application to aid in the understanding of the invention. However, such reference, unless otherwise indicated, is intended to point out the described exemplary embodiment; it is not intended to limit the scope of the claims to only the express embodiment cited below.

Claim 22

Claim 22 relates to a system of manufacturing containers. The system includes a unit 29 for thermally conditioning at least a preform 30. *See* Specification, p. 13, lines 4-7; FIG. 5. The system also includes an expansion unit 31 with at least an expansion device 36 of the said at least the preform 30, which expansion device is associated with a source of fluid to cause the expansion of the preform by injection of said fluid. *See* Specification p. 13, lines 24-28; FIG. 5. Also present is an isolating component 36 that seals the interior of the preform 30 from the exterior environment. *See* Specification, p. 14, lines 18-20; FIG. 5. Further, a connecting component 37 that places the interior of the preform 30 in communication with said source of fluid 38 to cause the expansion of the preform 30 wherein the expansion unit is a free expansion unit of at least certain of said areas of the preform 30. *See* Specification, p. 13, line 24 through p. 14, line 6; FIG. 5. The system is controlled by a control unit 47 which controls at least one

injection parameter of the fluid in order to control the expansion of the preform to produce the final container. *See* Specification, p. 14, line 24 through p. 15, line 17; FIGS. 6-8. The control unit 47 controls at least one injection parameter of the fluid is controlled so that a final internal volume of the container 44 falls within predetermined limits with respect to a reference volume. *See* Specification, p. 20, lines 1-20.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

(1) Claims 22, 24 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dusterhoft (US Pub. 2002/0062161).

VII. ARGUMENT

Appellant respectfully requests reconsideration of the present claim rejections in view of the comments presented below. Dependent claim 24 stands and falls with independent claim 22, but dependent claim 28 is submitted to be patentable for the additional reasons set forth below.

I. Claim Rejections – 35 U.S.C. § 103(a)

Claims 22, 24 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dusterhoft (US Pub. 2002/0062161).

In summary, Appellant submits Dusterhoft fails to disclose or suggest, controlling an injection parameter of a fluid so that a final internal volume of a container falls within predetermined limits. Rather, Dusterhoft's disclosure relates to the deformation of only a local deformation zone 6 using a defined application of energy from, for example, a laser 12. *See* FIG. 2; para. [0049]. While Dusterhoft utilizes an internal pressure to aid the deformation, this pressure is maintained constant as the defined pressure; the intensity of a laser 12, not the pressure, is controlled to control the deformation. *See* para. [0047]. Moreover, modifying Dusterhoft to use the pressure to control volume would destroy this principle of operation as taught by Dusterhoft. Thus, any such modification would not have been obvious to one of skill in the art. Accordingly, Appellant submits the Examiner's rejection is in error.

Claim 22 recites, *inter alia*, a control unit for controlling at least one injection parameter of the fluid in order to control the expansion of the preform to produce the final container,

wherein the at least one injection parameter of the fluid is controlled so that a final internal volume of the container falls within predetermined limits with respect to a reference volume.

A. Dusterhoft Fails to Disclose Controlling Pressure to Define Container

Volume

In the Final Office Action, the Examiner asserts:

While Dusterhoft does not specifically teach that an injection parameter of the fluid is controlled according to instant claim 22, Dusterhoft teaches a controllable pressure apparatus (26). The apparatus taught by Dusterhoft is capable of performing the instantly claimed function which, is should be noted, is a method limitation and does not materially affect the apparatus.

(Office Action, p. 2).

First, as asserted by the Examiner, Dusterhoft does not disclose that an injection parameter of the fluid is controlled as set forth in claim 22. However, the Examiner seems to contend that the apparatus of Dusterhoft is capable of performing the instantly claimed function. To the contrary, Appellants submit that Dusterhoft's controller, which only provides a defined pressure, is not capable of performing the function of claim 22.

In particular, Dusterhoft fails to disclose any monitoring equipment associated with the pressure, e.g., flow rate monitoring, which would permit volumetric control. Thus, there is simply no support for the Examiner's contention that Dusterhoft is capable of performing this function. Finally, Appellants submit this is a valid functional limitation, not a method limitation as alleged by the Examiner.

B. Controlling Pressure to Control Volume is Counter to the Principle of Operation of Dusterhoft.

Second, it would not be obvious to modify Dusterhoft to control the pressure such that a final internal volume of the container falls within predetermined limits because this would destroy the principle of operation of Dusterhoft. Rather, Dusterhoft discloses controlling the local deformation of a portion of a thin side wall 2 in order to meet a certain geometry in that location; no volumetric control is contemplated. *See* par. [0048]; Fig. 2. More specifically, Dusterhoft uses a geometry measuring device to measure the body 3. *See* para. [0048]. Based on this measurement, Dusterhoft calculates an energy profile to be locally applied in the local deformation zones 6. *Id.*

In particular, Dusterhoft provides:

The amount of energy and the level of deformability, respectively, of the body 3 is varied by a variation of the term of usage, intensity, pulse width or focus size of the laser beam 15 . . . the desired deformation of the body 3 results exclusively in the actual local deformation zone.

Para. [0048].

Consequently, Dusterhoft is directed to controlling the deliver of localized energy to a local deformation zone to control the deformation of this local portion exclusively. As such, modifying this process to utilize pressure to control the final volume of the container would destroy the principle of the localized process. Moreover, Dusterhoft fails to contemplate or suggest how any such pressure induced control could be carried out.

In conclusion, Appellants submit Dusterhoft is not capable of using pressure to control a final volume, does not contemplate using pressure to control a final volume, and discloses a principle of operation that is in direct contrast to using pressure control to control volume.

Therefore, Appellant submits claim 22 is allowable for at least these reasons.

Additionally, Appellant submits claims 24 and 28 are allowable, at least by virtue of their dependency.

Additionally, with regard to claim 28, Appellant submits Dusterhoft fails to expressly disclose stopping the fluid injection after a predetermined time. Dusterhoft is silent with regard to any such feature. Rather, as set forth above, Dusterhoft focuses on the applied energy of the energy profile and the duration that this profile is applied. Nowhere does Dusterhoft disclose applying pressure for a predetermined time.

Thus, Appellant submits claim 28 is allowable for this additional reason.

Conclusion

The USPTO is directed and authorized to charge the statutory fee (37 C.F.R. §41.37(a) and 1.17(c)) and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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Date: April 2, 2009

CLAIMS APPENDIX

CLAIMS 22, 24 and 28 ON APPEAL:

22. A system of manufacturing containers comprising:

a unit for thermally conditioning at least a preform;

an expansion unit with at least an expansion device of the said at least the preform, which expansion device is associated with a source of fluid to cause the expansion of the preform by injection of said fluid;

an isolating component that seals the interior of the preform from the exterior environment;

a connecting component that places the interior of the preform in communication with said source of fluid to cause the expansion of the preform wherein the expansion unit is a free expansion unit of at least certain of said areas of the preform; and

a control unit for controlling at least one injection parameter of the fluid in order to control the expansion of the preform to produce the final container,

wherein the at least one injection parameter of the fluid is controlled so that a final internal volume of the container falls within predetermined limits with respect to a reference volume.

24. A system according to claim 22, wherein the control unit is associated with a pressure controller that controls the pressure of the fluid injected into the preform.

28. A system according to claim 22, wherein the control unit controls a duration of injection of the fluid.

EVIDENCE APPENDIX:

Pursuant to 37 C.F.R. § 41.37(c)(1)(ix), submitted herewith are copies of any evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

None.

RELATED PROCEEDINGS APPENDIX

Submitted herewith are copies of decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

None.

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SUBMISSION OF APPEAL BRIEF

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Submitted herewith please find an Appeal Brief. The USPTO is directed and authorized to charge the statutory fee of \$540.00 and all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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